



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2018-0110

RIN 1625-AA09

Drawbridge Operation Regulation; Hackensack River, Jersey City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is temporarily modifying the operating schedule that governs the PATH Bridge across the Hackensack River, mile 3.0, at Jersey City, New Jersey. This action is necessary to allow for an unexpected delay in the replacement of rails and timbers across the length of the span of the bridge. This temporary final rule is necessary to allow the bridge owner to complete the remaining replacements and repairs.

**DATES:** This temporary final rule is effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 12:01 a.m. on December 31, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0110 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this interim rule, call or email Judy Leung-Yee, Bridge Management Specialist, U.S. Coast Guard; telephone 212-514-4336, e-mail Judy.K.Leung-Yee@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On April 2, 2018, we published a temporary deviation entitled, “Drawbridge Operation Regulation; Hackensack River, Jersey City, New Jersey” in the Federal Register (83 FR 13865). Outreach conducted with mariners utilizing the waterway indicated no objections to the temporary deviation. No complaints have been submitted during the current temporary deviation. This deviation allowed the bridge to remain in the closed to navigation position on 12:01 a.m. Saturday to 12:01 a.m. on Monday from March 31, 2018, to September 26, 2018, to facilitate the replacement of rails and timbers across the length of the span of the bridge.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public

interest.” Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. Due to unanticipated severe weather delays impacting the schedule and pace of replacement of rails and timbers across the length of the span of the bridge, additional time is required to finalize and complete the work necessary to restore the bridge to full operation. We must modify the operation schedule of the bridge by date of publication, to allow the bridge owner to perform remaining work items. Delaying the effective date of this temporary final rule would be impracticable because it would delay repairs to the bridge and efforts to restore it to full operation.

We are issuing this temporary final rule under 5 U.S.C. 553(d)(3), and for the reasons stated above, the Coast Guard finds that good cause exists for making it effective in less than 30 days after publication in the Federal Register. Delaying the effective date of this temporary final rule would be impracticable and contrary to the public interest given that need to complete repairs to the bridge which are already underway and preventing full operation

### **III. Legal Authority and Need for the Rule**

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The Coast Guard is modifying the operating schedule that governs the PATH Bridge across Hackensack River, mile 3.0, at Jersey City, New Jersey. The PATH Bridge is a vertical lift bridge offering mariners a vertical clearance of 40 feet at mean high water and 45 feet at mean low water in the closed position.

The existing drawbridge regulations are listed at 33 CFR 117.723(b). The Port Authority Trans-Hudson Corporation, the bridge owner, has requested this modification

as additional time is required to perform the replacement of rails and timbers as described above.

The waterway is transited by recreational and commercial vessels. Coordination with known waterway users has indicated no objection to the closure of the draw. Vessels able to pass under the bridge in the closed position may do so at anytime. The bridge will not be able to open for emergencies. There is no immediate alternate route for vessels to pass.

#### **IV. Discussion of the Rule**

The Coast Guard is issuing this temporary final rule, which permits a deviation from the operating schedule that governs the PATH Bridge across Hackensack River, mile 3.0, at Jersey City, New Jersey. The draw shall open on signal provided at least a two-hour advance notice is provided by calling the number posted at the bridge. However, the draw need not open for the passage of vessel traffic Monday through Friday, except Federal holidays, from 6 a.m. to 10 a.m. and from 4 p.m. to 8 p.m.; and from 12:01 a.m. Saturday to 12:01 a.m. Monday.

Weekdays additional bridge openings shall be provided for commercial vessels from 6 a.m. to 7:20 a.m.; 9:20 a.m. to 10 a.m.; 4 p.m. to 4:30 p.m. and from 6:50 p.m. to 8 p.m. provided at least a two-hour advance notice is given by calling the number posted at the bridge.

The rule is necessary to accommodate the completion of replacement of rails and timbers across the length of the span of the bridge

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive Orders

related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

#### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the historically low volume of vessel traffic during the period of this rule, and that vessel traffic able to pass under the bridge in the closed position will be able to safely transit. For the weekends between date of publication and December 31, there were six bridge openings in 2016 and one bridge opening in 2017.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the

various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review,

under figure 2-1, paragraph (32)(e), of the Instruction. A preliminary Record of Environmental Consideration and a Memorandum for the Record are not required for this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### **PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. From 12:01 a.m. on date of publication, through 12:01 a.m. on December 31, 2018, in § 117.723, suspend paragraph (b) and temporarily add paragraph (k) to read as follows:

#### **§ 117.723 Hackensack River**

\* \* \* \* \*

- (k) The draw of the PATH Bridge, mile 3.0, at Jersey City, shall open on signal provided at least a two-hour advance notice is provided by calling the number



posted at the bridge. The draw need not open for the passage of vessel traffic Monday through Friday, except Federal holidays, from 6 a.m. to 10 a.m. and from 4 p.m. to 8 p.m.; and from 12:01 a.m. Saturday to 12:01 a.m. Monday. Weekdays additional bridge openings shall be provided for commercial vessels from 6 a.m. to 7:20 a.m.; 9:20 a.m. to 10 a.m.; 4 p.m. to 4:30 p.m. and from 6:50 p.m. to 8 p.m. provided at least a two-hour advance notice is given by calling the number posted at the bridge.

Dated: October 12, 2018

A. J. Tiongson,  
Rear Admiral, U.S. Coast Guard,  
Commander, First Coast Guard District.

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